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December 17, 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
FACSIMILE  
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William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Ex Parte Presentation in GN Docket No. 93-252

Dear Mr. Caton:

On Friday, December 17, R. Michael Senkowski and the undersigned, from Wiley, Rein & Fielding, and Carol Bjelland, from GTE Service Corporation, met with Judith Argentieri of the Tariff Division. We handed out and discussed two position papers, two copies of which are attached.

Respectfully submitted,

  
Jeffrey S. Linder

cc (w/o): Judith Argentieri

Attachments

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**MAXIMUM FORBEARANCE FROM TITLE II REGULATION IS WARRANTED**

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- **The mobile services industry is undergoing remarkable changes**  
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  - The cellular industry is highly competitive
  - PCS will be introduced in 1994, with up to seven new providers in each market
  - ESMRs, such as Motorola/Nextel and DialPage, have emerged as nationwide and regional service providers
  - Existing robust competition will only continue to intensify
- **Section 332 gives the FCC broad authority to forbear from imposing regulations that are unnecessary in the competitive mobile industry**
  - Congress recognized the increasingly competitive nature of mobile services
  - The FCC was empowered to remove Federal and state regulations that are unnecessary to protect consumers
- **The record contains virtually unanimous support for exercising the full scope of this forbearance authority**
  - Commenters support maximum deregulation
  - Only the California PUC and NCRA offer contrasting views
- **Forbearance is supported for all of Title II except Sections 201, 202, and the complaint provisions, particularly tariffing, record-keeping, and TOCSIA**
  - Imposition of these requirements on CMS providers would be burdensome, unnecessary, and contrary to the public interest
  - Until 1993, mobile service providers were not subject to tariffing, record-keeping, and TOCSIA -- and there is no evidence that consumers need such formal regulatory requirements
  - With new industry players such as PCS providers and ESMRs, these requirements clearly provide no benefits to consumers

## **COMPLIANCE WITH TARIFFING, RECORD-KEEPING, AND TOCSIA REQUIREMENTS WOULD BE BURDENSOME AND CONTRARY TO THE PUBLIC INTEREST**

- **Tariffing**

- The FCC already has found that tariffing “can inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends.”
- Thousands of cellular carriers, PCS providers, and ESMRs would need to establish, at considerable total expense, capabilities to prepare, file, and review tariffs
- Filing and review of countless CMS tariffs would stretch already limited FCC resources

- **Record-keeping**

- Maintaining the capability to satisfy record-keeping and accounting requirements would be extremely burdensome and costly
- FCC enforcement and review of CMS providers’ compliance with these requirements would be equally wasteful

- **TOCSIA**

- Cellular carriers (and in the future, PCS providers and ESMRs), if classified as Operator Service Providers, would have to “brand” all roamer calls --
  - creating significant expense
  - confusing customers, and
  - wasting RF capacity.
- Compliance would be impossible in many circumstances
  - CMS providers could not reasonably comply with an obligation to allow customers to access both cellular licensees (or all PCS licensees) in a market, especially if a customer is roaming.
  - The underlying CMS provider could not provide information to the customer about its rates, because it has no direct relationship with the customer and does not set the rates charged to the customer, and could not enforce compliance with aggregator

requirements because it has no contractual relationship with the mobile public phone service provider.

- Air-to-ground ("ATG") providers cannot transfer calls to other ATG providers, as would be required if ATG carriers were considered OSPs.

## **MAXIMUM SERVICE FLEXIBILITY FOR ALL CMS PROVIDERS IS WARRANTED**

- **Section 332 seeks to assure equivalent regulatory treatment of all providers of competing commercial mobile services**
  - Disparate treatment of substitutable services would impede competition, deter innovation, and harm consumers
  - The record confirms that there is no basis for applying different rules to different classes of CMS providers
- **CMS regulation should allow providers “the maximum degree of flexibility to meet the communications requirements of differing mobile and portable applications for both businesses and individuals” (PCS Order at ¶ 23)**
  - The Commission’s PCS goals of *universality, speed of deployment, diversity of services, and competitive delivery* should be applied to CMS generally
  - To achieve these goals, all CMS providers must have maximum flexibility to define and deliver any service demanded in the marketplace
- **The Commission should maximize service flexibility in four respects:**
  - The Commission should allow all CMS providers with exclusive licensed spectrum to provide both commercial and private services as they see fit -- *in order to promote efficient use of spectrum, spur innovation, and provide incentives to develop and deploy new services*
  - The Commission should clarify that current Part 22 licensees may provide enhanced services -- *in order to remove uncertainty that may impede the introduction of innovative data transmission offerings and information services*
  - The Commission should eliminate the dispatch limitation -- *in order to promote competition and allow all CMS providers to offer any service demanded by their customers*
  - The Commission should grant all CMS providers equivalent authority to provide ancillary fixed services -- *in order to foster the introduction of valuable new services and avoid unwarranted competitive distortions*